

of this paragraph (b)(2) as assets contributed to the nuclear decommissioning fund on such date; and

(B) The withdrawal of any such assets on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the taxable year that includes such date shall be treated in the same manner as the withdrawal of an excess contribution (see paragraph (c)(2) of § 1.468A-5).

(3) *Manner of and time for making election.* A taxpayer may elect the application of section 468A for a taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, by attaching the Election Statement and a copy of the schedule of ruling amounts to—

(i) A return that is filed on or before the time prescribed by law (including extensions) for filing to return for such taxable year; or

(ii) An amended return for such taxable year that is filed on or before the 90th day after the date that the taxpayer receives a ruling amount for such taxable year.

(4) *Determination of cost of service limitation.* (i) For purposes of section 468A(b)(1) and paragraph (b)(2)(ii) of § 1.468A-2, decommissioning costs included in cost of service for any taxable year beginning before January 1, 1987, shall include decommissioning costs that can be accurately determined from information contained in the regulated books of account or other written records of the taxpayer.

(ii) For purposes of section 468A(b)(1) and paragraph (b)(2) of § 1.468A-2, the cost of service amount applicable to a nuclear decommissioning fund for the taxable year that includes July 18, 1984, is the amount determined under paragraph (b)(2) of § 1.468A-2 multiplied by a fraction, the numerator of which is the amount of nuclear decommissioning costs that is directly or indirectly charged to customers in such taxable year and that is included in the taxable income of the taxpayer for such taxable year and the denominator of which is the amount of nuclear decommissioning costs that is directly or indirectly charged to customers in such taxable year and that would have been included in the gross income of the tax-

payer if such costs were taken into account by the taxpayer in the same manner as amounts charged for electric energy (see § 1.88-1). Under the preceding sentence, an amount of decommissioning costs is included in the taxable income of a taxpayer for the taxable year that includes July 18, 1984, if the amount is included in gross income for such taxable year and no deduction (other than a deduction allowed under section 468A(a) and paragraph (a) of § 1.468A-2) is claimed with respect to such amount for such taxable year.

(5) *Assumptions and determinations to be used in determining ruling amounts.* (i) To the extent consistent with the principles and provisions of § 1.468A-3, a ruling amount for any taxable year beginning before January 1, 1987, shall be based on the reasonable assumptions and determinations used by the applicable public utility commission(s) in establishing or approving the amount of decommissioning costs included in cost of service for ratemaking purposes for such taxable year.

(ii) If the applicable public utility commission(s) did not disclose the after-tax rate of return used in establishing or approving the amount of decommissioning costs included in cost of service for any period during a taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, the after-tax rate of return during such period is equal to 54 percent of the overpayment rate in effect under section 6621 during such period.

(iii) If the applicable public utility commission(s) did not disclose the other assumptions and determinations used in establishing or approving the amount of decommissioning costs included in cost of service for any taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, ruling amount for each such taxable year shall be determined by taking into account—

(A) The amount of decommissioning costs included in cost of service for such taxable year;

(B) The qualifying percentage (as determined under paragraph (d)(4) of § 1.468A-3 and paragraph (b)(7) of this section); and

(C) The amount of decommissioning costs included in cost of service for any earlier taxable year.

(6) *Exception to level funding limitation.* Notwithstanding paragraph (b) of § 1.468A-3, the Internal Revenue Service may, in its discretion, provide a schedule of ruling amounts specifying a ruling amount for a taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, that is greater than the ruling amount specified in such schedule for a later taxable year.

(7) *Determination of qualifying percentage.* (i)(A) The qualifying percentage shall be determined under this paragraph (b)(7)(i) if a nuclear power plant began commercial operations on or before July 10, 1986, and a taxpayer—

(1) Files a request for a schedule of ruling amounts for the nuclear decommissioning fund maintained with respect to such nuclear power plant on or before June 1, 1988; and

(2) Elects the application of this paragraph (b)(7)(i) in its request for a schedule of ruling amounts.

(B) If the qualifying percentage is determined under this paragraph (b)(7)(i), the estimated period for which the nuclear decommissioning fund is to be in effect for purposes of paragraph (d)(4)(ii) of § 1.468A-3 begins on the later of—

(1) The first day of the taxable year that includes the date that the nuclear power plant began commercial operations; or

(2) The first day of the taxable year that includes July 18, 1984.

(ii)(A) The qualifying percentage shall be determined under this paragraph (b)(7)(ii) if a nuclear power plant began commercial operations before July 18, 1984, and a taxpayer—

(1) Files a request for a schedule of ruling amounts for the nuclear decommissioning fund maintained with respect to such nuclear power plant on or before June 1, 1988; and

(2) Elects the application of this paragraph (b)(7)(ii) in its request for a schedule of ruling amounts.

(B) If the qualifying percentage is determined under this paragraph (b)(7)(ii), the estimated period for which the nuclear decommissioning fund is to be in effect for purposes of

paragraph (d)(4)(ii) of § 1.468A-3 and the estimated useful life of the nuclear power plant for purposes of paragraph (d)(4)(iii) of § 1.468A-3 shall end on the earlier of—

(1) The last day of the taxable year in which it is estimated that decommissioning will begin; or

(2) The last day of the taxable year that includes the expiration date of the Nuclear Regulatory Commission operating license as in effect on July 18, 1984, without regard to any extensions or amendments thereto.

(iii) In the case of a nuclear power plant that began commercial operations before July 18, 1984, and whose estimated useful life for ratemaking purposes was adjusted by a public utility commission before July 18, 1984, a taxpayer may elect in its request for a schedule of ruling amounts to compute the qualifying percentage in accordance with the following rules:

(A) If the taxpayer files a request for a schedule of ruling amounts for the nuclear decommissioning fund maintained with respect to such nuclear power plant on or before June 1, 1988, the qualifying percentage equals the percentage of original depreciation costs (determined without regard to capitalized decommissioning costs) with respect to the nuclear power plant that remains to be recovered for ratemaking purposes as of the first day of the taxable year that includes July 18, 1984.

(B) If a taxpayer does not file a request for a schedule of ruling amounts for the nuclear decommissioning fund maintained with respect to such nuclear power plant on or before June 1, 1988, the qualifying percentage equals the percentage of original depreciation costs (determined without regard to capitalized decommissioning costs) with respect to the nuclear power plant that remains to be recovered for ratemaking purposes as of the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund that relates to such nuclear power plant.

(C) For purposes of this paragraph (b)(7)(iii), original depreciation costs with respect to a nuclear power plant include only those costs that were taken into account in determining the